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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,264	11/26/2001	Gary Edward Pawlas	35015.003	8615
32827	7590	11/18/2003	EXAMINER	
DUFT SETTER OLLILA & BORNSSEN LLC 2060 BROADWAY SUITE 300 BOULDER, CO 80302			MAKI, STEVEN D	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/994,264	PAWLAS ET AL.	
	Examiner	Art Unit	
	Steven D. Maki	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-72 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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- 1) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to a flow meter (an article), classified in class 73, subclass 861.355.
  - II. Claims 5-18, 29-44, drawn to method of affixing flow tube to legs, classified in class 156, subclass 294.
  - III. Claims 19-28, drawn to a fixture apparatus, classified in class 156, subclass 423.
  - IV. Claims 45-64, drawn to method of affixing driver component / pick off component to flow tube, classified in class 156, subclass 297 / 304.1.
  - V. Claims 65-69, drawn to method of manufacturing tubes, classified in class 264, subclass 209.3.
  - VI. Claims 70-72, drawn to method of testing alignment, classified in class 73, subclass 1.16.

- 2) The inventions are distinct, each from the other because:

distinct article

Inventions II, IV, V (methods) and Invention I (article) are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case: With respect to Group II, the product as claimed can be made by another and materially different process such as affixing without using an adhesive (e.g. mechanically coupling the flow

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tube to the legs); it being noted that claim 1 does not recite that the flow tube is bonded to the legs with adhesive. Alternatively, the product as claimed can be made by another and materially different process such as applying adhesive to the outer surface of the tube or the inner surface of the tube opening and then inserting the tube into the tube openings. With respect to Group IV, the product as claimed can be made by another and materially different process such as affixing without using an adhesive (e.g. mechanically coupling the driver / pick-off to the flow tube). With respect to Group V, the process as claimed can be used to make other and materially different product such as a medical device, heat exchanger or vacuum apparatus (the vacuum being established using the tube).

Invention I (article) and Invention VI (method) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as measuring flow without testing alignment of driver and pick-off.

Invention III (apparatus) and Invention I (article) are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different

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apparatus (MPEP § 806.05(g)). In this case, the product as claimed can be made by another and materially different apparatus such as a pair of clamps located outside the legs instead of between the legs.

distinct apparatus

Inventions II, IV (methods) and Invention III (apparatus) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as butt welding tubes to each other or holding a sleeve on a tube during bonding of the sleeve to the outer surface of the tube or molding a solid rod.

Inventions V, VI (methods) and Invention III (apparatus) are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as butt welding tubes to each other or holding a sleeve on a tube during bonding of the sleeve to the outer surface of the tube or molding a solid rod. See MPEP § 806.05(d).

distinct methods

Invention V and Inventions II, IV, VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention V has

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separate utility such as use in a process for making a heat exchanger or a medical device or a vacuum apparatus wherein the vacuum is established using the tube. See MPEP § 806.05(d).

Invention VI and Inventions II, IV, V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each of inventions II, IV and V has separate utility such as making a flow meter without testing alignment of driver and pick-off. See MPEP § 806.05(d).

Invention II and Invention IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as in a process of making a flow meter wherein the driver / pick off is mechanically coupled to the legs of the flow meter. See MPEP § 806.05(d).

3) Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4) **Rejoinder of some or all groups will be considered upon indication of allowable subject matter depending on the basis thereof.**

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5) Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6) A telephone call was made to Curtis Ollila on November 13, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

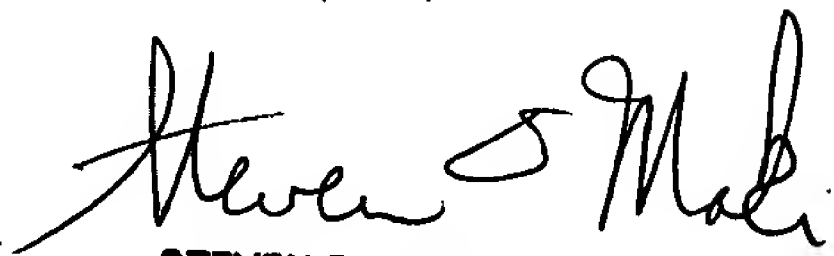
7) Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is 703-308-2068 until Dec. 18, 2003 and (571) 272-1221 after Dec. 18, 2003. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (703) 308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Steven Maki  
November 16, 2003

  
STEVEN D. MAKI  
PRIMARY EXAMINER  
~~GROUP 1300~~  
Av 1733  
11-16-03